



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 8, 2004

Ms. Linda Rhodes  
City Secretary  
City of Lake Worth  
3805 Adam Grubb  
Lake Worth, Texas 76135-3509

OR2004-9518

Dear Ms. Rhodes:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 212540.

The City of Lake Worth (the "city") received a request for: 1) "all information available from January 1, 2000 thru March 4, 2003 in regard to any police calls from" either of two named individuals and 2) evidence that the named individuals own adjoining properties. You claim that the information responsive to the first item of the request is excepted from disclosure under section 552.101 of the Government Code. You also state that no responsive information exists for the second item requested.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, however, the requestor has not asked the city to compile any particular individual's criminal history. Rather, the requestor merely seeks records pertaining to all calls made for police service by two particular individuals. We conclude, therefore, that an individual's right to privacy is not implicated in this instance.

The submitted records do, however, contain information that is excepted from disclosure under section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(2) excepts from required public disclosure the home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See Open Records Decision No. 622* (1994). The city must withhold those portions of the records that reveal peace officers' home addresses and home telephone numbers pursuant to section 552.117(a)(2). We have marked the information in the submitted records that the city must withhold under section 552.117(a)(2).

We note that the submitted information also includes Texas driver's license information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Section 552.130 is intended to protect an individual's privacy interest. Therefore, the requestor has a special right of access to his own section 552.130 information. *See Gov't Code § 552.023* (person has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information). The city must withhold the Texas driver's license number not belonging to the requestor under section 552.130. We have marked the information accordingly.

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions like sections 552.117 and 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *Open Records Decision Nos. 481* (1987), *480* (1987), *470* (1987).

In summary, the city must withhold the marked information pursuant to sections 552.117 and 552.130. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "L. Joseph James". The signature is written in a cursive style with a large, stylized "L" and "J".

L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/seg

Ref: ID# 212540

Enc. Submitted documents

c: Mr. Larry Humphries  
4312 Woodlake Drive  
Lake Worth, Texas 76135  
(w/o enclosures)